

acquired by *S* in the merger. Consequently, neither *P* nor *S* has taxable gain or deductible loss on the exchange of those shares. Under paragraph (c) of this section, however, *S* recognizes \$10 of gain on the exchange of its *P* stock in the reorganization because *S* did not receive the *P* stock from *P* pursuant to the plan of reorganization. See § 1.358-6(d) for the effect on *P*'s basis in its *S* stock.

(e) *Effective date.* This section applies to triangular reorganizations occurring on or after December 23, 1994.

Par. 5. Section 1.1502-30 is added to read as follows:

§ 1.1502-30 Stock basis after certain triangular reorganizations.

(a) *Scope.* This section provides rules for determining the basis of the stock of an acquiring corporation as a result of a triangular reorganization. The definitions and nomenclature contained in § 1.358-6 apply to this section.

(b) *General rules*—(1) *Forward triangular merger, triangular C reorganization, or triangular B reorganization.* *P* adjusts its basis in the stock of *S* as a result of a forward triangular merger, triangular *C* reorganization, or triangular *B* reorganization under § 1.358-6(c) and (d), except that § 1.358-6(c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities assumed by *S* or the amount of liabilities to which the *T* assets acquired by *S* are subject, and

(ii) The fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(2) *Reverse triangular merger.* If *P* adjusts its basis in the *T* stock acquired as a result of a reverse triangular merger under § 1.358-6(c)(2)(i) and (d), § 1.358-6(c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities deemed assumed by *S* or the amount of liabilities to which the *T* assets deemed acquired by *S* are subject, and

(ii) The fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(3) *Excess loss accounts.* Negative adjustments under this section may exceed *P*'s basis in its *S* or *T* stock. The resulting negative amount is *P*'s excess loss account in its *S* or *T* stock. See § 1.1502-19 for rules treating excess loss accounts as negative basis, and treating references to stock basis as including references to excess loss accounts.

(4) *Application of other rules of law.* The rules for this section are in addition to other rules of law. See § 1.1502-80(d) for the non-application of section 357(c) to *P*.

(5) *Examples.* The rules of this paragraph (b) are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, the facts set forth the only corporate activity, and tax liabilities are disregarded.

Example 1. Liabilities. (a) *Facts.* *T* has assets with an aggregate basis of \$60 and fair market value of \$100. *T*'s assets are subject to \$70 of liabilities. Pursuant to a plan, *P* forms *S* with \$5 of cash (which *S* retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth \$30 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358-6, *P* adjusts its \$5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358-6(c)(1)(ii) does not apply. Thus, *P* adjusts its basis in the *S* stock by -\$10 (the aggregate adjusted basis of *T*'s assets decreased by the amount of liabilities to which the *T* assets are subject). Consequently, as a result of the reorganization, *P* has an excess loss account of \$5 in its *S* stock.

Example 2. Consideration not provided by P. (a) *Facts.* *T* has assets with an aggregate basis of \$10 and fair market value of \$100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a \$5 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive \$70 of *P* stock provided by *P* pursuant to the plan of reorganization and \$30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358-6, *P* adjusts its \$5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358-6(d)(2) does not apply. Thus, *P* adjusts its basis in the *S* stock by -\$20 (the aggregate adjusted basis of *T*'s assets decreased by the fair market value of the consideration provided by *S*). As a result of the reorganization, *P* has an excess loss account of \$15 in its *S* stock.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example 2*, except that in the reorganization *S* provides an asset with a \$20 adjusted basis and \$30 fair market value instead of \$30 cash. The basis is adjusted in the same manner as in paragraph (b) of this *Example 2*. In addition, because *S* recognizes a \$10 gain from the asset under section 1001, *P*'s basis in its *S* stock is increased under § 1.1502-32(b) by

S's \$10 gain. Consequently, as a result of the reorganization, *P* has an excess loss account of \$5 in its *S* stock. (The results would be the same if the appreciated asset provided by *S* was *P* stock with respect to which *S* recognized gain. See § 1.1032-2(c)).

Example 3. Reverse triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of \$60 and fair market value of \$100. *T*'s assets are subject to \$70 of liabilities. *P* owns all of the only class of *S* stock. *P* has a \$5 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders exchange their *T* stock for \$2 cash from *P* and \$28 worth of *P* stock provided by *P* pursuant to the plan. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(E) apply.

(b) *Basis adjustment.* Under § 1.358-6, *P*'s basis in the *T* stock acquired equals its \$5 basis in its *S* stock immediately before the transaction adjusted by the \$60 basis in the *T* assets deemed transferred, and the \$70 of liabilities to which the *T* assets are subject. Under the rules of this section, the limitation described in § 1.358-6(c)(1)(ii) does not apply. Consequently, *P* has an excess loss account of \$5 in its *T* stock as a result of the transaction.

(c) *Effective date.* This section applies to reorganizations occurring on or after December 21, 1995.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.
[FR Doc. 95-30875 Filed 12-20-95; 8:45 am]
BILLING CODE 4830-01-U

26 CFR Parts 1 and 602

[TD 8631]

RIN 1545-AT79

Notice of Significant Reduction in the Rate of Future Benefit Accrual; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations (TD 8631) which were published in the Federal Register for Friday, December 15, 1995 (60 FR 64320). The final regulations provide guidance concerning the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the finding standards of section 302 of ERISA.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary (202) 622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The final regulations that are the subject of this correction are under section 411 of the Internal Revenue Code.

Need for Correction

As published, TD 8631 contains an error which is in need of correction.

Correction of Publication

Accordingly, the publication to the final regulations which is the subject of FR Doc. 95-30416, is corrected as follows:

On page 64321, column 3, in the preamble, following the paragraph heading *Effective Dates*, line 5, the language "or after January 2, 1996." is corrected to read "or after December 30, 1995."

Michael Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95-30977 Filed 12-15-95; 3:31 pm]

BILLING CODE 4830-01-U

26 CFR Parts 1 and 602

[TD 8649]

RIN 1545-AS87

Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to conversion transactions. These regulations provide that certain gains and losses from positions of the same conversion transaction may be netted for purposes of determining the amount of gain that is recharacterized as ordinary income. These regulations reflect changes to the law made by the Revenue Reconciliation Act of 1993 and affect persons who enter into conversion transactions.

DATES: These regulations are effective December 21, 1995.

For applicability of these regulations, see **EFFECTIVE DATES** under the **SUPPLEMENTARY INFORMATION** part of the preamble.

FOR FURTHER INFORMATION CONTACT:

Alan B. Munro, (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1452. Responses to this collection of information are required to obtain netting relief for conversion transactions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per recordkeeper varies from .05 to 10 hours, depending on individual circumstances, with an estimated average of .10 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 27, 1994, the IRS published in the Federal Register a notice of proposed rulemaking and notice of public hearing at 59 FR 66498 (FI-43-94) under section 1258 of the Internal Revenue Code of 1986.

The IRS received a number of written comments on the proposed regulations. No requests to speak at the public hearing were received, however, and consequently the hearing was cancelled.

Explanation of Provisions**A. General**

The proposed regulations allow taxpayers to net gains and losses on the positions of certain conversion transactions for purposes of section 1258(a). For a taxpayer to be eligible, the proposed regulations require the taxpayer to identify, before the close of the day on which the positions become part of the conversion transaction, all the positions that are part of the conversion transaction. In addition, the

taxpayer has to dispose of all the positions within a 14-day period that is within a single taxable year. The proposed regulations also define built-in loss and prohibit the netting of built-in loss against gain.

The commenters uniformly supported the netting relief provided by the proposed regulations. Accordingly, the final regulations are substantially unchanged from the proposed regulations.

The proposed regulations provide that the regulations will be effective for conversion transactions entered into on or after the date of filing of final regulations with the Federal Register. Several commenters requested that the regulations also apply to conversion transactions entered into prior to the filing date. In response to these comments, the final regulations provide for application of the regulations to any conversion transaction that is outstanding on December 21, 1995, provided that all the positions which are part of the conversion transaction are identified under § 1.1258-1(b)(2) before the close of business on February 20, 1996. The final regulations also provide a transition rule for the same-day identification requirement that allows taxpayers to identify conversion transactions entered into prior to February 20, 1996, at any time on or before February 20, 1996.

Several commenters criticized the examples for failing to adjust the applicable imputed income amount (AIIA) under section 1258(b) for interest and dividends received. The scope of these regulations, however, is limited to netting relief. The IRS is still studying various situations to determine the extent to which it is appropriate to reduce the AIIA by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise. Accordingly, Example 3 has been deleted and Examples 1 and 2 have been clarified to eliminate any implication on this issue.

One commenter requested that the identification requirement be eliminated as impractical, unnecessary, and a trap for the unwary. This same-day identification requirement is similar to identification requirements under sections 475 and 1221. Identification of all the positions of a conversion transaction will aid examiners attempting to determine whether conversion transactions are present and will prevent mismatching of those positions by both taxpayers and agents. The final regulations retain the same-day identification requirement but provide a transition rule.